

Kluwer Mediation Blog

Mediating Across Borders – No Training Necessary?

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It's the first week of February and therefore ICC International Mediation Week, including the International Commercial Mediation Competition. Those, like myself, who can't be there, and are following the proceedings on social media, will have also noticed the save the date notice issued for the 2nd International Mediation and Negotiation Competition at the CDRC in Vienna this summer (which I will be at, fortunately!)

International and cross-border mediation are clearly growing in popularity and visibility. Competitions such as these which invite aspiring lawyers, mediators and others into the field are particularly welcome, as opening the world of alternative dispute resolution to legal professionals early in their training goes a long way towards ensuring its increased use in the future.

That the global world and marketplace brings with it an increase in global disputes goes without saying, as does the fact that such disputes are often resolved more easily and cost effectively through mediation than through multi-jurisdictional mediation. This latter message will reach those choosing dispute resolution options by various channels, not least the new generation of legal professionals participating in mediation competitions. What is less clear is what those parties should look for when selecting a mediator for their dispute. What will the parties main concerns be? Location? Availability? Fee levels? Experience? Probably. But what about qualifications. Does the proposed mediator have the appropriate qualifications? Does he or she, for example, have a qualification in cross border mediation? Does such a thing even exist?

This summer, the Charles University in Prague shall be hosting its first Summer Mediation Academy, (www.praguemediation.com), a week long course offering specialized training in cross border mediation. For my two co-designers and myself (having to declare my hand at this point) recognising that cross border mediation requires an additional layer of skills, training and expertise was the starting point that led to the design of a programme intended to give experienced mediators access to an additional layer of knowledge and expanded toolbox of mediation skills.

So what skills are these? What knowledge does a mediator taking on a cross border case need that he or she does not already have? To answer this, let's look at a hypothetical example. An Irish tech startup is creating a new web based service aimed primarily at the European market. In the early stages of delivering its new service, a customer in the Czech Republic experiencing problem which escalate into a dispute. A significant aspect of these problems relate to the functionality of an aspect of the website which has been coded by the Irish company's subcontractor in Romania. The subcontractor acknowledges some responsibility but feels the Irish company is equally at fault in

rolling out the service before it was adequately tested. The Irish company also has an issue with the Czech user's possible breach of a confidentiality agreement. All parties, wishing to avoid the substantial costs of cross border litigation and negative publicity, agree to go to mediation. They contact you.

Among the issues that will now arise for you are the following:

Where will the mediation take place? While you are happy to travel to Prague, you know little about where to find out about how mediation is regulated there.

The Romanian web developer is not keen to travel at all and would like to engage with the process online? What options do you have in this regard?

How do you ensure that any agreement the parties enter into is enforceable in all the relevant countries?

What expectations do the different parties have of the mediation process? Do they even all have the same understanding of what mediation is?

How do you prevent an argument over the jurisdiction clause in the Agreement to Mediate (this one I have personal experience of too...)

How do you ensure you can build the appropriate rapport with all the parties given the cultural differences and possible language barriers?

Can you be sure that the mediation will be kept confidential in all the relevant countries?

These are just some considerations that will be facing you in a cross border mediation, before even getting to the subject matter of the dispute. Concerned? Don't be. The process knowledge, additional skills and tools and resources can be acquired, and in the case of the Prague Mediation Academy in an international context and setting, with the benefit of the knowledge and experience of people working in the field and experienced professionals from a range of countries. Cross border mediation has extra layers of complexity but these are easily managed by adding a few extra things to our mediation toolboxes.

It need not therefore just be the (much younger) students of law and ADR that get to enjoy learning new skills and meeting like-minded colleagues in a beautiful European city. All we older, experienced mediators need to do is book a ticket to Prague and upskill ourselves to work effectively and skillfully in the world of cross border disputes. Oh, and the social programme is looking pretty good too... See www.praguemediation.com for further details..!

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This entry was posted on Friday, February 12th, 2016 at 3:28 pm and is filed under [Commercial Mediation](#), [cross-border mediation](#), [Cross-cultural](#), [Developing the Field](#), [EU Mediation Directive](#), [Europe](#), [International Mediation](#)

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